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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

ROBERT FITZGERALD SMITH,

Petitioner,

vs.

BRIAN E. WILLIAMS, et al.,

Respondents.

Case No. 2:15-cv-00465-JAD-PAL

**ORDER**

Petitioner has paid the filing fee. He has filed a first amended petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (#5). The court has reviewed the first amended petition (#5) pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. The court will serve the first amended petition (#5) upon respondents for a response.

Petitioner has filed a motion for appointment of counsel (#2). Whenever the court determines that the interests of justice so require, counsel may be appointed to any financially eligible person who is seeking habeas corpus relief. 18 U.S.C. § 3006A(a)(2)(B). “[T]he district court must evaluate the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims pro se in light of the complexity of the legal issues involved.” Weygandt v. Look, 718 F.2d 952 (9th Cir. 1983). There is no constitutional right to counsel in federal habeas proceedings. McCleskey v. Zant, 499 U.S. 467, 495 (1991). The factors to consider are not separate from the underlying claims, but are intrinsically enmeshed with them. Weygandt, 718 F.2d at 954. After reviewing the first amended petition (#5), the court concludes that appointment of counsel is not warranted.

IT IS THEREFORE ORDERED that the motion for appointment of counsel (**Doc. 2**) is **DENIED**.

IT IS FURTHER ORDERED that the **Clerk shall add Adam Paul Laxalt, Attorney General for the State of Nevada, as counsel for respondents.**

1 IT IS FURTHER ORDERED that the Clerk shall electronically **serve** upon respondents a  
2 copy of the first amended petition (#5) and this order. In addition, the Clerk shall **return** to  
3 petitioner a copy of the first amended petition (#5).

4 IT IS FURTHER ORDERED that respondents will have 45 days from service of the petition  
5 to answer or otherwise respond to it. Respondents must raise all potential affirmative defenses in  
6 the initial responsive pleading, including lack of exhaustion and procedural default. Successive  
7 motions to dismiss will not be entertained. If respondents file and serve an answer, then they must  
8 comply with Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts,  
9 and then petitioner will have 45 days from the date on which the answer is served to file a reply.

10 IT IS FURTHER ORDERED that any exhibits filed by the parties must be filed with a  
11 separate index of exhibits identifying the exhibits by number or letter. The CM/ECF attachments  
12 that are filed further must be identified by the number or numbers (or letter or letters) of the exhibits  
13 in the attachment. The hard copy of any additional state court record exhibits must be  
14 forwarded—for this case—to the staff attorneys in Las Vegas.

15 IT IS FURTHER ORDERED that petitioner must hereinafter serve upon respondents or, if  
16 appearance has been entered by counsel, upon the attorney(s), a copy of every pleading, motion or  
17 other document submitted for consideration by the court. Petitioner will include with the original  
18 paper submitted for filing a certificate stating the date that a true and correct copy of the document  
19 was mailed to the respondents or counsel for the respondents. The court may disregard any paper  
20 received by a district judge or magistrate judge that has not been filed with the clerk, and any paper  
21 received by a district judge, magistrate judge, or the clerk that fails to include a certificate of  
22 service.

23 Dated: June 23, 2015.

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JENNIFER A. DORSEY  
United States District Judge  
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